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**U.S. District Court
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:13-cv-03090-REB-BNB**

Branson v. Price et al
Assigned to: Judge Robert E. Blackburn
Referred to: Magistrate Judge Boyd N. Boland
Cause: 42:1983 Civil Rights Act

Date Filed: 11/14/2013
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Gary Branson

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V.

Defendant**Robert Price**

*Commerce City Police Officer, in his
official capacity*

Defendant**Arica Bores**

*Commerce City Community Services
Officer, in her official capacity*

Defendant**Christopher Castillo**

*Commerce City Police Officer, in his
official capacity*

Defendant**City of Commerce City, Colorado****Defendant****Robert (I) Price**

in his individual capacity

Defendant**Arica (I) Bores**

in her individual capacity

Defendant**Christopher (I) Castillo**

in his individual capacity

Date Filed	#	clear	Docket Text
11/14/2013	1	<input type="checkbox"/>	COMPLAINT against All Defendants (Filing fee \$ 400, Receipt Number 1082-3619724), filed by Gary Branson. (Attachments: # 1 Civil Cover Sheet) (Swearingen, Jay) (Entered: 11/14/2013)
11/14/2013	2		Case assigned to Judge Wiley Y. Daniel and drawn to Magistrate Judge Boyd N. Boland. Text Only Entry (sphil,) (Entered: 11/14/2013)
11/14/2013	3	<input type="checkbox"/>	Magistrate Judge Consent Form issued. No summons issued. (sphil,) (Entered: 11/14/2013)
11/15/2013	4	<input type="checkbox"/>	MEMORANDUM RETURNING CASE by Senior Judge Daniel. (jjhsl,) (Entered: 11/15/2013)
11/15/2013	5		CASE REASSIGNED pursuant to 4 Memorandum Returning Case. This case is reassigned to Judge Robert E. Blackburn. All future pleadings should be designated as 13-cv-3090-REB-BNB. Text Only Entry (jjhsl,) (Entered: 11/15/2013)

			11/15/2013)
11/18/2013	6		ORDER REFERRING CASE to Magistrate Judge Boyd N. Boland for non-dispositive motions. That pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b), this matter is referred to the assigned United States Magistrate Judge:(1) To convene a scheduling conference under Fed. R. Civ. P. 16(b), enter a Scheduling Order that satisfies the requirements of D.C.COLO.LCivR 16.2, and enter such orders as appropriate to enforce the Scheduling order and resolve discovery matters; provided, further that the scheduling conference, the Magistrate Judge shall advise the parties of Judge Blackburns practice standards found at www.cod.uscourts.gov.:(2) To hear and finally determine non-dispositive matters that have been referred, subject to the exceptions found in 28 U.S.C. § 636(b)(1)(A); and(3) To hear and make recommendations on dispositive matters that have been referred as defined in 28 U.S.C. § 636(b)(1)(A).Court sponsored alternative dispute resolution is governed by D.C.COLOLCivR 16.6. On the recommendation or informal request of the magistrate judge or on the request of the parties by motion, this court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding. By Judge Robert E. Blackburn on 11/18/13. Text Only Entry (rebsec,) (Entered: 11/18/2013)
11/20/2013	7	<input type="checkbox"/>	ORDER setting Scheduling Conference for 2/12/2014 at 10:30 AM in Courtroom A 401 before Magistrate Judge Boyd N. Boland. By Magistrate Judge Boyd N. Boland on 11/20/2013. (klyon,) (Entered: 11/20/2013)
02/04/2014	8	<input type="checkbox"/>	MINUTE ORDER: The Scheduling Conference set for February 12, 2014, is vacatedand reset to April 17, 2014, at 9:30 a.m., in Courtroom A-401, Fourth Floor, Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado 80294. The proposed Scheduling Order is due on or before April 10, 2014. By Magistrate Judge Boyd N. Boland on 2/4/2014. (klyon,) (Entered: 02/04/2014)
02/25/2014	9	<input type="checkbox"/>	AMENDED COMPLAINT against All Plaintiffs, filed by Gary Branson. (Swearingen, Jay) (Entered: 02/25/2014)
02/28/2014	10	<input type="checkbox"/>	NOTICE of Entry of Appearance by Tiffany Jo Drahota on behalf of Gary Branson (Drahota, Tiffany) (Entered: 02/28/2014)
03/03/2014	11	<input type="checkbox"/>	SUMMONS REQUEST as to Robert Price, Arica Bores, Christopher Castillo, City of Commerce City re 1 Complaint, 9 Amended Complaint by Plaintiff Gary Branson. (Attachments: # 1 Summons, # 2 Summons, # 3 Summons)(Drahota, Tiffany) (Entered: 03/03/2014)
03/04/2014	12	<input type="checkbox"/>	SUMMONSES issued by Clerk. (klyon,) (Entered: 03/04/2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

GARY BRANSON,

Plaintiff

v.

COMMERCE CITY POLICE OFFICER ROBERT PRICE, in his official and individual capacity,
COMMERCE CITY COMMUNITY SERVICES OFFICER ARICA BORES, in her official and individual capacity,
COMMERCE CITY POLICE OFFICER CHRISTOPHER CASTILLO, in his official and individual capacity, and
CITY OF COMMERCE CITY, COLORADO,

Defendants.

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, Gary Branson, by and through his counsel, The Animal Law Center, and hereby files this Complaint and Jury Demand. Plaintiff respectfully allege as follows:

INTRODUCTION

1. Plaintiff brings this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 for relief through compensatory damages and attorney's fees stemming from Defendants' violations of Plaintiff's rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States. Defendants' conduct under color of state and municipal law proximately caused the

deprivation of Plaintiff's federally protected rights. Plaintiff seeks relief through compensatory damages, and attorney's fees.

2. This action arises under the Constitution and laws of the United States including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201.
3. This is also an action under Colorado law alleging intentional infliction of severe emotional harm and willful and wanton negligence.
4. Venue is proper in the United States District Court, for the State of Colorado, pursuant to 28 U.S.C. § 1391 and 28 U.S.C.A. § 1343(3) under the Supremacy Clause of the Constitution of the United States. All of the events alleged herein occurred within the State of Colorado, and all of the parties are residents of the State of Colorado.
5. Jurisdiction supporting Plaintiff's claim for attorney's fees is conferred by 42 U.S.C. § 1988.

PARTIES

6. Plaintiff Gary Branson resides in the City of Pueblo, Pueblo County, Colorado. Plaintiff's dog, Chloe, was in Commerce City, Adams County, Colorado at the time of her shooting and death.
7. Defendant Commerce City Police Officer Robert Price ("Officer Price") was at all times relevant to this complaint duly appointed and sworn as a police officer

- working for the Commerce City Police Department. Officer Price is a named Defendant in both his individual and official capacity.
8. Defendant Commerce City CSO Arica Bores (“CSO Bores”) was at all times relevant to this complaint duly appointed and sworn as a police community service officer working for the Commerce City Police Department. This position also includes acting in the capacity of an Animal Control Officer. Officer Bores is a named Defendant in both her individual and official capacity.
 9. Defendant Commerce City Police Officer Christopher Castillo (“Officer Castillo”) was at all times relevant to this complaint duly appointed and sworn as a police officer working for the Commerce City Police Department. Officer Castillo is a named Defendant in both his individual and official capacity.
 10. Defendant City of Commerce City is a governmental entity and municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983, and the Commerce City Police Department is a department of Commerce City.
 11. Officer Price acted under color of law in the course of carrying out the actions and omissions that violated Plaintiff’s rights. Commerce City is a municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983. It carries out law enforcement activities through the Commerce City Police Department.
 12. CSO Bores acted under color of law in the course of carrying out the actions and omissions that violated Plaintiff’s rights. Commerce City is a municipality incorporated under the laws of the State of Colorado for purposes of liability

under 42 U.S.C. § 1983. It carries out law enforcement activities through the Commerce City Police Department.

13. Officer Castillo acted under color of law in the course of carrying out the actions and omissions that violated Plaintiff's rights. Commerce City is a municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983. It carries out law enforcement activities through the Commerce City Police Department.

14. Defendants acted under color of state and municipal law. Alternatively, or in combination, Defendants acted under color of federal law.

15. All of the events described herein occurred in Commerce City and State of Colorado.

FACTUAL BACKGROUND

16. At the time of the incident described herein, the Plaintiff, Gary Branson owned a four year-old mixed breed female dog named Chloe.

17. Mr. Branson has a disability as defined by the Americans with Disabilities Act ("ADA").

18. Chloe was a therapy animal as defined by federal law.

19. Chloe was not a pit bull, as defined by the Commerce City Municipal Code.

20. The Plaintiff at all times material hereto, resided at 1141 Elm Street, Pueblo, CO.

21. The Plaintiff's cousin, Carol Robertson, lives at 9695 Nucla Street, Commerce City, CO.

22. On or about November 22, 2012, the Plaintiff dropped off Chloe at his cousin Carol Robertson's residence, for her to take temporary care of Chloe, as the Plaintiff was traveling, by air, to California over the Thanksgiving holiday.
23. The Plaintiff had previously left Chloe in Ms. Robertson's care, over the previous Thanksgiving holiday, without incident.
24. On November 24, 2012, at some point that morning, Chloe was able to leave the Robertson residence unattended. Chloe was loose in the vicinity of the Robertson residence in Commerce City.
25. Shortly before 11:30 AM, a neighbor, Kenny Collins, who resides across the street from the Robertson home, saw Chloe loose and called 911 to report that fact to the Commerce City Police Department.
26. Mr. Collins called 911 again, approximately 20 minutes later, as he had not observed any response from the Commerce City Police Department.
27. At some point after the initial 911 call, the dispatcher advised CSO Bores, of the call and CSO Bores was dispatched to the scene.
28. CSO Bores arrived in the vicinity of the 911 call, in her Animal Control truck, approximately one half hour after the initial 911 call, and did observe the dog, later identified as Chloe, as being loose on the block where Ms. Robertson resides.
29. CSO Bores using her Animal Control truck followed Chloe back to the Robertson address, where Chloe remained through the rest of the incident leading to her killing by Officer Price.

30. Officer Castillo, after advising dispatch, arrived on scene at the Robertson residence to assist CSO Bores. Both Officer Castillo and CSO Bores left their vehicles, while Chloe remained in the vicinity of the Robertson driveway and Robertson garage.
31. CSO Bores and her vehicle were equipped with a variety of animal control devices, including a “catch pole.”
32. CSO Bores had received animal control training for several years while employed by Commerce City Police Department. She was also instructed that the killing of a companion dog without reasonable cause was a violation of the Constitutional rights of the dog owner. She also has received instruction that other officers in a position to prevent the unreasonable use of deadly force against a companion dog, who fail to act to prevent the use of such unreasonable force, also violate the Constitutional rights of the dog owner.
33. Officer Castillo had received training offered by the Commerce City Police Department regarding dog behavior and appropriate actions to take, including the use of non-lethal force to protect himself, other officers and the public. He was also instructed that the killing of a companion dog without reasonable cause was a violation of the Constitutional rights of the dog owner.
34. Officer Castillo has testified after Chloe’s killing, that he did not take seriously the training regarding dogs he received through the Commerce City Police Department and thought the training was joke. Officer Castillo was paid by the City of Commerce City for his participation in the training.

35. Chloe has no history of violating any animal control provisions, nor acting in an aggressive manner, in Commerce City or elsewhere.
36. At some point after CSO Bores and Officer Castillo were at the Robertson residence, Commerce City Police Officer Robert Price arrived at the scene.
37. Officer Price used his police vehicle to “herd” Chloe further up the driveway toward the house, and the open garage door.
38. All three Commerce City Officers were outside their vehicles for several minutes, observing Chloe standing and sitting inside the open garage.
39. Chloe did not move toward or exhibit aggressive behavior toward any of the three officers. She went into and remained inside the garage.
40. Officer Price did go to the Robertson’s front door and also spoke with a next door neighbor of the Robertson’s, Fadel Berthe, while Chloe stood in the garage.
41. There was a second dog inside the Robertson’s garage which was in a crate.
42. There was no attempt by CSO Bores or Officer Castillo to approach Chloe and attempt to capture her with a catch pole, although for several minutes both of them stood within 10 feet of Chloe standing in the garage.
43. Officer Castillo also obtained a catch pole while at the Robertson residence.
44. There was no attempt by CSO Bores or Officer Castillo to lure or entice Chloe to approach the officers, standing just a few feet from Chloe to allow them to use their catch poles or otherwise capture Chloe.
45. Approximately the last five minutes of Chloe’s life were captured on video tape by the son of Kenny Collins, from an upstairs window in the Collins home, directly across the street from the Robertson’s residence.

46. There came a time in those last five minutes when Officer Price used his taser to shoot Chloe on two separate occasions.

47. Office Price communicated with CSO Bores and Officer Castillo, and then Price began to move toward Chloe, with her remaining in the garage and not approaching the officers.

48. As the officers approached, Chloe began to back away from the officers, when Officer Price fired his taser.

49. Chloe was hit by the initial taser shot and did fall down.

50. When Chloe got back up, she retreated further into the garage. She still did not move toward or charge any of the Officers or act aggressively, despite the painful experience and assault she had just suffered.

51. All three of the officers went into the garage. No officer attempted to close the garage door and confine Chloe in the garage or open the back door to the fenced back yard.

52. Officer Price then went further into the garage, along the back wall, as the other two officers moved toward Chloe and into the garage, with catch poles. CSO Bores got into position to try and capture her.

53. CSO Bores was not armed with a gun during this incident.

54. There was a garage door opener inside the garage, which would have allowed the garage door to be closed. There was also a door into a fenced back yard in the garage. No effort was made by any officer to use the door opener to close the garage, or to open the door to the fenced back yard. The garage door was left open, for Chloe to try and escape her fate and again be loose in the neighborhood,

although all three officers and Chloe were in the garage. Shutting the door would have prevented Chloe from getting out again.

55. The garage had lighting and there were switches in the garage to allow the lights to be turned on, providing visibility, even if the garage door was shut. No one turned on the lights.

56. There was a second dog crate in the garage which was empty and visible to the officers.

57. There was communication between Officer Price and the other two officers as Officer Price moved along the back wall of the garage.

58. Officer Price had reloaded his taser and held the taser in his left hand pointing at Chloe. CSO Bores provided a second taser cartridge and Officer Castillo passed it to Officer Price, while all officers were in the garage. Officer Price reloaded his taser.

59. Officer Price had his right hand on his service weapon as he walked in and around in the garage toward Chloe

60. Officers Price and Castillo had on their police utility belts, which contained several non-lethal devices that could have been deployed to protect themselves or SCO Bores from any dog attack.

61. CSO Bores had her catch pole in position to capture Chloe, if Chloe moved toward the open garage door and was trained and skilled in its use.

62. When Officer Price fired his second taser shot at Chloe, Chloe was not knocked down this time and tried to escape for her life.

63. Chloe attempted to escape the assault by Officer Price by running desperately toward the open garage door.
64. Officer Bores, as she was trained and equipped to do, was able to slip the catch pole noose around Chloe's head as Chloe ran for her life.
65. Officer Price, while Chloe was being captured by Officer Bores, drew his service weapon with his right hand and immediately began firing in the direction of Chloe and Officer Bores and the open garage door.
66. At least one of the bullets fired by Officer Price ended up striking and putting a hole in CSO Bores Animal Control vehicle.
67. Mr. Collins and Mr. Berthe, the next door neighbor of the Robertson's, were standing in Mr. Collins driveway watching the events and in virtually a direct line of fire for at least one of Officer Price's shots.
68. Office Price did not stop with his first shot, even though Chloe had clearly been captured by Officer Bores. Officer Price ran following Chloe and as Chloe was swung around by Officer Bores after being captured on the catch pole, Officer Price continued to shoot to kill Chloe.
69. Chloe was desperately trying to pull away from Officer Bores, after having been shot twice with a taser and hit at least once by one of Price's bullets.
70. A necropsy of Chloe's body was performed at Colorado State University Veterinary Hospital.
71. Officer Price kept shooting at Chloe to kill her and finally accomplished his goal of killing a captured, wounded, defenseless dog that had not ever attacked anyone, had not bitten anyone, and never moved aggressively toward the officers.

72. Officer Price wanted to kill Chloe to such an extent that he was willing to fire his weapon numerous times in the direction of his fellow officers, civilian bystanders, and in the direction of other homes in the area, despite Chloe being held by a capture pole by a CSO trained in animal control work.
73. Officer Price did not act reasonably in murdering Chloe in cold blood.
74. CSO Bores and Officer Castillo did not act reasonably in allowing Officer Price to use and continue to use deadly force even after Chloe was no threat.
75. Officer Price, not knowing that there was a video tape of the shooting, prepared a statement for the Commerce Police Department regarding this incident. In that statement, Officer Price knowingly, willfully, and intentionally lied regarding several facts that are clearly apparent from the video.
76. Officer Price deliberately lied when reporting that Chloe “charged towards me in an aggressive manner and stopped 15 feet away.” This did not happen.
77. Officer Price deliberately lied about Chloe being so aggressive she would not let the officers in to close the garage door. All three officers went into the garage without Chloe charging them.
78. Officer Price deliberately lied about Chloe being “extremely aggressive” towards neighbors and the officers.
79. Officer Price deliberately lied about Chloe trying to bite either Officer Bores or Officer Castillo at any time.
80. Officer Price deliberately lied about Chloe “going after Officer Castillo and CSO Bores.”

81. Officer Price deliberately lied about Chloe overpowering CSO Bores and then “basically dragging her”, while still trying to bite Officer Castillo, after Chloe was snared by CSO Bores catch pole.
82. Officer Price deliberately lied about Chloe turning around and going after CSO Bores.
83. Officer Price deliberately lied about the shooting in saying that the patrol cars would be a “backstop” for his shots. That is only true for the first shot which did hit the Animal Control vehicle and was aimed in the direction of CSO Bores and the civilians standing directly across the street in the line of fire. The remainder of the shots were not in the direction of any police vehicle, but were in the direction of the Robertson’s porch and the homes of their neighbors.
84. Officer Price deliberately lied about Chloe continuing to be aggressive and biting the “control pole.”
85. Officer Price deliberately lied when he reported that a witness across the street had told Carol Robertson that Chloe was growling and attacking people.
86. Officer Price discussed the incident with CSO Bores and Officer Castillo, prior to filing his report with the Commerce City Police Department.
87. Chloe died as a direct result of being shot multiple times by Officer Price.
88. Officer Price failed to follow use of force procedures of the Commerce City Police Department.
89. Officer Price failed to follow standard police procedure regarding his shooting of Chloe.

90. Officer Price failed to allow a CSO with several years training in animal control to take charge of an animal control call.
91. Officer Price deliberately lied to the Commerce City Police Department regarding the events surround his killing of Chloe.
92. CSO Bores in her report to the Commerce City Police regarding the incident intentionally, deliberately, willfully, wantonly, and recklessly lied about the circumstance of Chloe's death.
93. CSO Bores was unaware that the circumstances of Chloe's death and her actions were being recorded.
94. CSO Bores lied about Chloe being vicious. CSO Bores did not see Chloe attack, chase, or bite anyone, nor did she talk with anyone who described Chloe exhibit that type of behavior.
95. CSO Bores lied about Chloe becoming "extremely aggressive."
96. CSO Bores lied about Chloe baring her teeth, growling, and lunging at the officers as they approached Chloe.
97. CSO Bores lied about missing Chloe with her catch pole and Chloe charging Officer Castillo.
98. CSO Bores lied about Chloe continuing to charge and lunge at all three officers after the second tasing effort by Officer Price.
99. CSO Bores lied about not being able to hold onto Chloe after catching Chloe and after Chloe had already been shot at least once, and Chloe "running in circles" trying to attack all three officers and "dragging her' behind Chloe.
100. CSO Bores lied about when Officer Price started shooting Chloe.

101. CSO Bores lied about Chloe continuing to charge the officers after being shot and trying to bite them.
102. CSO Bores lied about dropping the catch pole after Chloe was shot and Chloe continuing to lash around and bite the catch pole. She maintained a hold onto the pole and/or the strap which is used to tighten the noose holding the dog.
103. CSO Bores lied about Chloe dying a few minutes after the shooting stopped. CSO Bores also never called for any emergency veterinary or medical assistance for Chloe.
104. CSO Bores discussed the incident with Officer Price and Officer Castillo before making a written statement for the Commerce City Police Department and prior to knowing that the incident had been recorded.
105. Officer Castillo in his report to the Commerce City Police regarding the incident intentionally, deliberately, willfully, wantonly, and recklessly lied about the circumstance of Chloe's death.
106. Officer Castillo was unaware that the circumstances of Chloe's death and his actions were being recorded.
107. Officer Castillo lied about the position of his and CSO Bores' position while he and she were standing around talking, gesturing, watching Chloe and Officer Price as Chloe's final minutes ticked away. Rather than being halfway down the driveway, CSO Bores was within about 6 feet or less of Chloe and Officer Castillo was approximately 10 feet away.

108. Officer Castillo lied about Chloe demeanor as he and CSO Bores moved closer to Chloe with catch poles. Chloe did not bare her teeth and start moving toward them in an aggressive manner.
109. Officer Castillo lied about the behavior of Chloe after the second taser shot. He lied about Chloe charging at CSO Bores and then him.
110. Officer Castillo lied about CSO Bores being unable to control Chloe on the catch pole.
111. Officer Castillo lied and virtually used the same words in his report as found in CSO Bores report, stating that Officer Bores dropped the catch pole and that the pit bull continued to fight and bite at the catch pole.
112. CSO Bores held onto the catch pole at all times, both by holding onto the pole and/or the rope attachment, used to loosen or tighten the snare loop, as Chloe attempted to back away from her.
113. The City of Commerce City police department was involved in a shooting a mere two years prior to the shooting of Chloe when Commerce City police officer Suzanne Barber shot and killed a small family dog named Zoey.
114. Despite having knowledge of court rulings in the previous case clearly making it a civil rights violation to act unreasonably or act without just cause to shoot a dog, the City of Commerce City police department does not have specific policies or procedures regarding the use of force on domestic animals or even policies or procedures regarding dog encounters with police officers.

115. The City of Commerce City police department did conduct training after the previous Zoey shooting, but officers were allowed to poke fun at the training and not take it seriously.
116. There are numerous pets owned by the residents of the City of Commerce City, many of which are at the scene of investigations or other activity conducted by the City of Commerce City police department.
117. The City of Commerce City owes an affirmative duty to its residents to keep their property, including pet animals, from being killed or injured by police officers, without proper justification.
118. The City of Commerce City is and has been fully aware that its residents' pet animals come into regular contact with armed police officers and even has special knowledge of the risk of an officer shooting a family pet due to a highly publicized previous incident.
119. The City of Commerce City has no policy or provision to provide emergency medical care, treatment, or transportation for pet animals suffering injury as a result of actions by its employees, including police officers.
120. The City of Commerce City, in blatant disregard of the property rights and safety interests of its residents, has failed and or refused to adopt policies or procedures to protect the Fourth Amendment rights of its residents regarding the use of lethal force on companion dogs.
121. The City of Commerce City Police Department ordered a fire department wash down of the scene of the shooting of Chloe and did not conduct a proper investigation before doing so.

122. During the Chloe shooting action, the City of Commerce City Police Department allowed the second dog, Jake, who was in the garage to escape from his kennel and made little to no effort to locate, retrieve him, and return him home despite the fact they felt it so necessary to shoot and kill Chloe, who was also in the garage with a second empty kennel clearly present.

123. The Plaintiff has fully complied with the notice provision of the Colorado Governmental Immunity Act, and timely notified all Defendants named in this Complaint, as required by C.R.S. § 24-10-109.

124. Extensive psychological testing, analysis, and counseling has been required for Mr. Branson.

125. Mr. Branson spent funds for Chloe's maintenance during her life.

126. Mr. Branson had trained Chloe to assist him with his life activities.

127. Plaintiff Branson has suffered severe emotional distress as a direct result of having Chloe intentionally, deliberately, willfully, and wantonly shot and killed by Officer Price and his actions, including but not limited to all three officers intentionally, deliberately willfully and wantonly lying about the circumstances of the shooting to protect their own interests.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 Fourth Amendments Violation)

128. Plaintiff incorporates all proceeding paragraphs of this Complaint for purposes of this claim.

129. This Claim is brought against Defendant Officer Price, CSO Bores, and Officer Castillo, in both their individual and official capacities.

130. As described herein, Officer Price, CSO Bores, and Officer Castillo while acting under color of law, unlawfully and without due process of law, deprived the Plaintiff of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, Officer Price unreasonably wantonly, intentionally, knowingly, recklessly, and excessively used unnecessary force without any reasonable justification or probable cause in drawing his weapon and fatally shooting Chloe. CSO Bores participated in the incident and despite her training did nothing to stop the killing of Chloe, even though she had Chloe in her control on the catch pole.

131. These actions were in violation of the Plaintiff's rights under the Fourth Amendment to the Constitution of the United States.

132. Officer Price, prior to his killing of Chloe, knew or should have known and understood that the owner of the dog had a constitutionally protected property interest in Chloe.

133. CSO Bores, prior to participating in the killing of Chloe and failing to stop it once it started, knew or should have known and understood that the owner of the dog had a constitutionally protected property interest in Chloe.

134. Officer Price, CSO Bores, and Officer Castillo knew or should have known that shooting a dog would constitute a "seizure" of the property of its owner(s), and that the owners' property rights could not be taken without due process of law.

135. Officer Price, CSO Bores, and Officer Castillo knew or should have known that the officers did not have the legal right to kill Chloe, when Chloe posed no

threat to them, and that other non-lethal measures and equipment were readily available and had been deployed prior to the decision to kill Chloe.

136. Officer Price, CSO Bores, and Officer Castillo knew or should have know that the officers did not have the legal right to continue to shoot Chloe, when Chloe posed no threat to them, and that other non-lethal measures and equipment were readily available and had been or could have been deployed prior to the decision to shoot Chloe and after she no longer posed any threat to the officers or the public.

137. In his official capacity as a law enforcement officer, under color of state law, and acting within the ordinary course and scope of his employment, or, alternatively, in his individual capacity, Officer Price fatally shot Chloe without any legal right to do so.

138. In their official capacity as a law enforcement officers, under color of state law, and acting within the ordinary course and scope of their employment, or, alternatively, in their individual capacities, CSO Bores and Officer Castillo participated in the killing of Chloe and did not act to prevent her being shot by Officer Price after Chloe presented no further danger, despite their duty to protect life and property.

139. Officer Price's conduct was reckless given the fact that CSO Bores was on scene and fully trained in animal control work, the location of the incident in a quiet, residential neighborhood, the presence of civilian witnesses standing outside the residence and additional residents living in the immediate proximity of the location of the incident, and Chloe had not bitten or attacked anyone.

140. There was also a high level of danger to others from the shots fired due to the Robertson's concrete driveway and steps. The bullets had a higher chance of ricochet fire because of the concrete driveway and steps and the bullet could have injured the other officers present or another person living on the street or someone driving by.

141. Defendant Price acted intentionally and with malice to the Plaintiff in shooting Chloe, and depriving the Plaintiff of his property rights under the Fourth Amendment.

142. CSO Bores and Officer Castillo acted intentionally and with malice to the Plaintiff in participating in the killing of Chloe and not stopping Officer Price from continuing to shoot Chloe after she offered no danger to any party, depriving Plaintiff of his property rights under the Fourth Amendment.

143. All three officers acted intentionally and with malice to deprive the Plaintiff of his property rights under the Fourth Amendment by deliberately and intentionally lying about the circumstances of the shooting.

144. As a direct and proximate result of Officer Price's, CSO Bores', and Officer Castillo's conduct, the Plaintiff has been damaged in various respects including, but not limited to: being permanently deprived of the property value and companionship of his dog, Chloe, as well as suffering severe mental and physical anguish due to the egregious nature of his loss, all attributable to the deprivation of his constitutional and statutory rights guaranteed by the Fourth Amendment of the Constitution of the United States and protected under 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983 Fourth Amendment Violation)

1. Plaintiff incorporates all proceeding paragraphs of this Complaint for purposes of this claim.
2. This Claim for Relief is brought against the City of Commerce City through the Commerce City Police Department and its officers.
3. Acting under color of law and pursuant to official policy, custom or widespread practice, the City of Commerce City and its Police Department knowingly, recklessly or with deliberate indifference and callous disregard of Plaintiff's rights, and the rights of dog owners in the City of Commerce City, failed to instruct, supervise, control, equip, train, or discipline on a regular and continuing basis, police officers in their duties to refrain from unlawfully killing dogs and using excessive force against dogs that pose no immediate danger.
4. Defendant City of Commerce City had specific knowledge of said policy, custom or practice and exhibited a deliberate indifference to the unreasonable risk of property damage or loss, which said policy, custom or practice posed.
5. Defendant City of Commerce City, prior to this incident, knew that shooting a family pet without justification was a violation of the pet owner's property rights protected by the United States Constitution, and that the killing of a dog constituted a seizure of property under the Fourth Amendment.
6. Defendant City of Commerce City and its Police Department had an affirmative duty to prevent, or aid in preventing, the commission of such wrongs. Instead, knowingly, recklessly, or with deliberate indifference and callous disregard of

Plaintiff's rights and the rights of dog owners in the City of Commerce City, these defendants failed and refused to do so.

7. Defendant City of Commerce City and its Police Department directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, or wanton conduct of its police officers as described above.
8. Defendant City of Commerce City was fully aware that one or more of its police officers had previously shot and killed a companion animal, and still failed to act to provide any specific policy, training, supervision, or oversight to protect the property rights of its citizens against having their companion animals unlawfully, needlessly, or unjustifiably killed or injured by its police officers.
9. Defendant City of Commerce City knew that pet animals were at risk from city employees, including its police officers. Despite at least one recent prior shooting and killing of a pet animal by Commerce City police officer Suzanne Barber having occurred, the City of Commerce City failed to put in place any plan, or to implement any plan to provide emergency veterinary services for animals injured by employees of the City of Commerce City.
10. Neither Officers Price and Castillo, CSO Bores, nor any other Commerce City police officer had knowledge of the City's plan or policy to provide emergency veterinary care to pets injured by employees of the City of Commerce City, because such plan or policy did not exist.
11. Acting under the color of law, the City of Commerce City knowingly, recklessly or with deliberate indifference and callous disregard of Plaintiff's rights failed to

instruct, supervise, train, or equip its officers as to their duties to a dog that had been shot and severely wounded by one of its officers.

12. As a direct and proximate result of such conduct, Plaintiff has been damaged in various respects including, but not limited to, being permanently deprived of the property value and companionship of his dog, Chloe, without the due process of law, as well as suffering severe mental and physical anguish due to the egregious nature of their loss, all attributable to the deprivation of their constitutional and statutory rights guaranteed by the Fourth Amendment of the Constitution of the United States and protected under 42 U.S.C. § 1983.

THIRD CLAIM FOR RELIEF

(Intentional Infliction of Severe Emotional Distress)

13. Plaintiff incorporates all previous paragraphs of this Complaint for purposes of this claim.
14. This claim is brought against Defendant Police Officer Price, CSO Bores, and Officer Castillo in their individual and official capacities.
15. Intentional infliction of severe emotional distress, by Officer Price, CSO Bores, and Officer Castillo is the equivalent of willful and wanton conduct and is included in the legal definition of willful and wanton.
16. The decision to intentionally shoot a companion animal that had not been and was not vicious or aggressive and who did not injure or threaten Officer Price or anyone else, or exhibit any aggression or vicious propensity was extreme and outrageous conduct, and was intended to inflict severe emotional harm to the Plaintiff.

17. The failure of CSO Bores and Officer Castillo to prevent injury to Chloe after she no longer could or did represent a threat to any party and lying about what happened to protect themselves and Officer Price was extreme and outrageous conduct, and was intended to inflict severe emotional harm to the Plaintiff.
18. Officer Price had a lengthy opportunity to discuss Chloe's behavior with the other officers and with at least one neighbor of the Robertson's, prior to his murdering Chloe. All three officers were aware that Chloe had no physical contact with anyone, including the officers. Officer Price knew he had wounded the dog with his service gun and continued to fire at Chloe, despite the fact she had been captured and fallen wounded to the ground.
19. Officer Price then deliberately and intentionally lied about the circumstances of his killing of Chloe to the Commerce City Police Department and attempted to cover up what actually occurred and tried to place the blame on Chloe.
20. CSO Bores knew that she had captured Chloe and allowed Officer Price to continue to shoot Chloe and did nothing to stop it and then tried to cover up Officer Price's action and hers and Officer Castillo's inaction by lying about what occurred.
21. Officer Castillo knew that CSO Bores had captured Chloe and did nothing to prevent Officer Price from continuing to shoot Chloe and then tried to cover up Officer Price's action and the inaction by him and CSO Bores by lying about what occurred.

22. Officer Price knew that deliberately shooting and killing a companion dog which had not bitten or attacked anyone, would cause severe emotional distress to her owner and he shot Chloe, anyway.
23. CSO Bores and Officer Castillo knew that deliberately shooting and killing a companion dog which had not bitten or attacked anyone, would cause severe emotional stress to her owner and they did not stop Officer Price from shooting and continuing to shoot Chloe, until she died.
24. Officer Price intentionally failed to stop shooting at Chloe even after she was captured and wounded and presented no danger to anyone and contact dispatch or any other party to render emergency medical care to Chloe, preferring to kill Chloe versus attempting to provide any care to Chloe.
25. Shooting and killing Plaintiff's companion animal was willful, wanton, and intentional. Lying about the circumstances of Chloe's killing to cover it up was willful, wanton, and intentional. Plaintiff suffered from severe emotional distress, physical anguish and consequently required trauma counseling as a result of her needless death and the loss of Chloe as a therapy dog, and hearing the lies about the circumstances of Chloe's death.
26. As a direct and proximate result of such conduct, Plaintiff has been damaged in various respects including, but not limited to, suffering severe emotional distress due to the intentional actions of Officer Price, CSO Bores, and Officer Castillo.

FOURTH CLAIM FOR RELIEF

(Willful and Wanton Conduct)

27. Plaintiff incorporates all previous paragraphs of this Complaint for purposes of this claim.
28. This claim is brought against Defendant Commerce City Police Officer Price, CSO Bores, and Officer Castillo, in their individual and official capacities.
29. The decision to shoot a companion animal that was not been vicious or aggressive when backed into the garage for several minutes and who did not injure or threaten Officer Price, the other officers, or anyone else, or exhibit any aggression or vicious propensity was an act purposefully committed by Officer Price, who realized his conduct was dangerous, and which conduct was done heedlessly and recklessly, either without regard to the consequences, or without regard to the rights and safety of others, particularly the Plaintiff.
30. Officer Price, CSO Bores, and Officer Castillo observed Chloe backing away from the officers and then desperately trying to escape after she had been repeatedly tased by Officer Price.
31. Officer Price and Officer Castillo observed CSO Bores capture Chloe, with Chloe continuing to try and escape her needlessly deadly fate. Officer Price shot Chloe multiple times, including after Chloe had been shot several times and could not present any threat, and then he , CSO Bores, and Officer Castillo lied and attempted to cover up about what actually occurred. CSO Bores and Officer Castillo made no effort to stop Officer Price's killing of Chloe.

32. Shooting and killing Plaintiff's companion and therapy animal Chloe in the presence of CSO Bores, who was trained and equipped to handle dogs at large and Officer Castillo, who also had a catch or control pole was needless and constituted willful and wanton conduct. Plaintiff suffered from severe emotional distress, physical anguish and consequently required trauma counseling as a result Officer Price murdering Chloe and then lying about it and attempting to place the blame on Chloe.

33. Plaintiff suffered from severe emotional distress, physical anguish and consequently required trauma counseling as a result of the failure to act by CSO Bores and Officer Castillo and their lies to cover up about the needless killing of Chloe

34. As a direct and proximate result of such conduct, Plaintiff has been damaged in various respects including, but not limited to, suffering severe emotional distress due to the willful and wanton actions of Officer Price, CSO Bores, and Officer Castillo.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against the Defendants, and grant:

- (a) Appropriate declaratory and other injunctive and/or equitable relief;
- (b) Compensatory and consequential damages, including damages for emotional distress, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (c) All economic losses on all claims allowed by law;

- (d) Attorney's fees and the costs associated with this action, including those associated with expert witness fees, on all claims allowed by law;
- (e) Pre- and post-judgment interest at the lawful rate;
- (f) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFF DEMANDS A TRIAL BY JURY OF TWELVE ON ALL
ISSUES TRIABLE

Respectfully submitted this 14th day of November, 2013.

*By: Original signature of Jay Wayne
Swearingen, #4842,
on file and available for inspection pursuant
to C.R.C.P. 121.*

/s/ Jay Wayne Swearingen, Reg. # 4842
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Attorney for Plaintiff

*By: Original signature of Jennifer Reba
Edwards, #38349,
on file and available for inspection pursuant
to C.R.C.P. 121.*

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